Nations

Administrative Tribunal

Distr.
LIMITED

AT/DEC/912
20 November 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 912

Case No. 1011: DANNAN

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Chittharanjan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas, on 20 August and 25 November 1997, Mohammed Dannan, a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 23 February 1998, the Applicant, after making the necessary corrections, again filed an application, requesting the Tribunal:

> "To [order] UNRWA to reassign me immediately [to a] grade (13) post, and to pay me the appropriate compensation ... [for the] period ... when I still occupy a grade (10) post ... for more than four years ..."

Whereas the Respondent filed his answer on 30 July 1998;

Whereas the Applicant filed written observations on 21 September 1998;

Whereas, on 29 October 1998, the Tribunal put questions to the Respondent, to which he provided answers on 5 November 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Agency on 11 January 1984, on a temporary assistance basis as Senior Clerk, at the grade 8 level, in the Field Finance Department, Syrian Arab Republic (SAR). On 1 September 1984, he received an area temporary indefinite appointment in the same post. On 1 April 1985, the Applicant was transferred to the post of Claims Assistant "C". On 13 July 1985, the Applicant was appointed, in an acting capacity, as Budget Assistant B, to which post he was transferred, at the grade 10 level, on 1 November 1985. His appointment was terminated on 15 June 1986. On 1 June 1988, the Applicant re-entered the service of the Agency, as Accountant "A", at the grade 11 level, in the Field Finance Department. He was transferred to the post of Claims Assistant "A" in the same department on 17 September 1989. On 1 September 1990, the Applicant's post was reclassified to Claims Examination Officer, at the grade 13 level, and the Applicant was promoted to the full grade of the post.

On 9 June 1993, the Field Administration Officer, SAR, informed the Applicant that "[t]he audit report on internal control procedures in the SAR Finance Office has confirmed some problems in your work", and that his transfer to the post of Administrative Assistant, Education Department, had been approved with effect from 1 June 1993. Although the post was classified at the grade 10 level, the Applicant maintained his grade 13 status. On 23 June 1993, the Applicant protested his transfer to a lower grade post, in writing, to the Director of UNRWA Affairs, SAR, noting that he had never been informed of problems with his work and that his periodic reports consistently ranged from "Very Good" to "Outstanding". The Applicant requested the Director of UNRWA Affairs to transfer him to another post at the grade 13 level and to amend the letter of transfer to read that the transfer was made on a rotation basis and not based on problems with the Applicant's work.

On 7 July 1993, the Director of UNRWA Affairs replied as follows:

> "In response to your letter of 23 June 1993, the Audit Office recommended the rotation of a number of staff members including yourself. These rotations would have been made to posts of equal grade had posts of equal grade been available. Your rotation to a lower-graded post with full grade protection was simply because another post at grade 13 was not available.
>
> In accordance with normal Agency policy with regard to staff members with grade protection, you will be considered for reassignment when an appropriate post at a higher grade becomes available."

On 28 September 1994, the Applicant requested the Director of UNRWA Affairs to transfer him to the vacant grade 13 post of Income Generation Officer. On 5 October 1994, the Officer-in-Charge, Personnel Division, informed the Applicant that the Department of Relief & Social Services "has no intention of filling [that] post now."

On 19 July 1995, the Applicant requested the Officer-in-Charge, UNRWA Affairs, SAR, to transfer him to the vacant grade 13 post of "Field Administration Services Officer". On 22 July 1995, the Officer-in-Charge, Personnel Division, wrote to the Field Administration Officer, referring to the Applicant's request for a transfer and noting as follows: "I have a feeling he would make a good FASO. I suggest that we interview him ... and then decide."

On 6 August 1995, the Officer-in-Charge, Personnel Division, informed the Applicant that "it [had] been decided to advertise the post internally to give the chance to other staff members to compete for it" and that, therefore, the Applicant's request for direct transfer was not approved. The Officer-in-Charge, Personnel Division, stated, "Feel free to apply for the post, and your application shall be considered together with other applications on a basis of fair competition ..."

On 21 August 1995, the Applicant lodged an appeal with the Joint Appeals Board (JAB) against the decision not to reassign him to a grade 13 post.

On 12 November 1995, the Applicant requested the Officer-in-Charge, UNRWA Affairs, to add his name to the candidate list for the vacant post of Deputy Field Finance Officer. On the same date, the Officer-in-Charge informed the Chief, Field Education Programme, that because the Applicant's "rotation from the Finance Department was due to a recommendation of Internal Audit ... [h]e should be transferred to a department other than Finance." He added that he would place the Applicant's name on the candidate list.

The JAB adopted its report on 14 April 1997. Its evaluation and recommendation read, in part, as follows:

> "**III. EVALUATION**
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> ...
>
> (b) The Board notes that the Appellant failed to produce any evidence that his transfer was capricious or arbitrary; he only claims that he has been treated unjustly and that the transfer has had a bad effect on his spirits and morale for more than two years. ...
>
> (c) In this context, the Board could not establish that the Administration's decision appealed against has been motivated by prejudice against the Appellant and resolved that the Administration has acted within the framework of standing rules.
>
> **IV. RECOMMENDATION**
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> 14. In view of the foregoing and without prejudice to any further oral or written submission ..., the Board unanimously makes its recommendation to uphold the Administration's decision and that the case be dismissed.
>
> However, the Board is of the opinion that the Appellant should be considered [for] reassignment when an appropriate post at a higher grade becomes available."

On 29 May 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board recognized the Administration's managerial discretion to transfer staff members and noted that you had not produced evidence to impugn his initial transfer in 1993. Further, the Board opined that, provided the Administration's discretion in relation to evaluating the competing merits of staff members for vacant posts had been exercised without prejudice or other extraneous matters, it was beyond (...) the Board's jurisdiction to interfere with that discretion. In the absence of any prejudice or any other extraneous factors, the Board recommended that your appeal be dismissed.

I agree with the Board's conclusions and accordingly I dismiss your appeal."

On 23 February 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent should have reassigned the Applicant to one of the grade 13 posts that had become available, or to the grade 16 post of Deputy Field Finance Officer.

2. The Applicant did not receive advance notice of the change in the composition of the JAB. The new member was not given sufficient time to familiarize himself with the case before the hearing date.

Whereas the Respondent's principal contentions are:

1. The Respondent complied with t' e Staff Rules and properly exercised his discretion to transfer the Applicant to another post in the interest of the Agency.

2. The Applicant failed to show any improper motive or abuse in the Respondent's exercise of discretion.

3. The Applicant failed to show that the change in composition of the JAB prejudiced his appeal.

The Tribunal, having deliberated from 30 October to 20 November 1998, now pronounces the following judgement:

I. The Applicant was transferred on 9 June 1993, from the grade 13 position of Claims Examination Officer in the Field Finance Department of UNRWA to the grade 10 position of Administrative Assistant, Education Department, with salary protection at the level of grade 13.

The stated reason for the transfer was that "the audit report on internal control procedures in the SAR Finance Office has confirmed some problems in your work". The Tribunal has considered the audit report and cannot identify therefrom any allegation or finding that the Applicant had been experiencing problems in his work, or any other matter that would warrant criticism. As a result of a protest and representations made by the Applicant, the reasons earlier advanced were withdrawn, and the record was amended to show that the transfer was "on rotation." Since then, the Applicant was maintained in a grade 10 post until 1 November 1998, when he was transferred to the post of Administrative Officer (grade 12) in the Department of Relief and Social Services. He has not yet been reassigned to a grade 13 post.

II. The Applicant claims that he is entitled to:

(i) Compensation for being deprived of an opportunity to be promoted to a grade 16 post;

(ii) Compensation for the psychological harm suffered by being transferred to a lower grade post; and

(iii) Reassignment to a grade 13 post.

III. The Respondent rightly argues that the first claim above was not made before the internal review bodies, including the Joint Appeals Board (JAB). For this reason, the

Tribunal decides that the claim is not receivable, as the Applicant did not exhaust internal remedies.

IV. The other claims merit careful examination.

According to answers to questions put by the Tribunal, the Respondent has stated that since the time of the Applicant's transfer out of his grade 13 post, eight vacancies for grade 13 posts have become available, of which six have been filled. According to UNRWA PD/A/4, Part II, paragraph 8.5:

> "For vacancies advertised internally, priority shall be given in accordance with the following order:
>
> First Priority: Fully qualified redundant staff member.
> Second Priority: Fully qualified staff member with grade protection.
> Third Priority: Fully qualified staff member."

On two separate occasions, in 1993 and in 1995, the Applicant submitted his request to the Agency to transfer him to vacant grade 13 posts, those of Income Generation Officer and Field Administrative Services Officer. As to the first request, he was informed by the Officer-in-Charge, Personnel Division, that "the Department of Relief & Social Services ... has no intention of filling the said post [of Income Generation Officer] now." As to his second request, the Officer-in-Charge, Personnel Division, informed the Applicant that "it has been decided to advertise this post internally" and that therefore the "request for direct transfer is not approved." The Officer-in-Charge further stated, "Please feel free to apply for this post, and your application shall be considered ... on the basis of fair competition." The Applicant appears not to have followed up by applying for that post.

In relation to the Applicant's efforts to be restored to a grade 13 post, the Respondent has contested the Applicant's claims on the grounds, inter alia, that he does not possess the necessary qualifications and that because he was transferred out of Finance, he should not be allowed to return. The Tribunal has difficulty in understanding the Respondent's attitude, for

several reasons. First, the Applicant is a person transferred from Finance "on rotation". This can not be a ground for precluding his return to that department. Second, in relation to his qualifications, there is issue between the parties as to whether his degree is properly called an "Accountancy" degree or a degree in "Business and Economics". The Tribunal does not understand why this disagreement has not been definitively resolved. Third, the Respondent does not show a willingness to grant him in any meaningful way his entitlement to priority treatment. Furthermore, it is not clear to the Tribunal that subsequent efforts to place the Applicant in a grade 13 position were not influenced in some way by the questions raised at the time of his transfer relating to his conduct.

V. The failure by the Administration to place him in a grade 13 post was characterized by arbitrariness. He was only considered for one grade 13 post for which he was found unqualified, and he did not formally apply for another grade 13 post for which he had been invited to apply. Be that as it may, the Tribunal is not satisfied that the Administration made bona fide efforts to transfer him to a grade 13 post. The Agency's rules require the Agency to give priority to staff members transferred with grade protection in the filling of vacancies. The Administration failed to grant the Applicant the priority to which he was entitled.

VI. The treatment accorded to the Applicant since his transfer to a grade 10 post, while not tainted by any proven prejudice has, nevertheless, been characterized by irregularities which make it arbitrary and constitute an abuse of discretion. For this, the Applicant must be compensated. Moreover, the Administration must make every effort to place him in a grade 13 post as soon as possible.

VII. The Applicant also claims that there was a procedural irregularity in his not being informed of a change in the composition of the JAB. This failure resulted from the sudden inability of two original appointees to serve and not from any bad faith on the part of the

Respondent. This irregularity was not of an essential nature. It did not cause the Applicant hardship or harm and is not compensable.

VIII. For the foregoing reasons, the Tribunal orders that:

(i) The Applicant be compensated in the amount of two months net base salary at the rate in effect on the date of this judgement;

(ii) The Respondent make every effort to place the Applicant as soon as possible in a grade 13 post; and

(iii) All other pleas are rejected.

(Signatures)

Hubert THIERRY
President

Chittharanjan Felix AMERASINGHE
Member

Kevin HAUGH
Member

New York, 20 November 1998

R. Maria VICIEN MILBURN
Executive Secretary